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*Testimony of Rep. Anne Carney presenting  
LD 666, An Act to Protect Pregnant Workers  
Before the Joint Standing Committee on Judiciary*

Good morning Senator Carpenter, Representative Bailey and esteemed members of the Judiciary Committee. I am Anne Carney, representing House District 30, Cape Elizabeth. I am pleased to present **LD 666, An Act to Protect Pregnant Workers**, a bill that proposes a simple and effective fix to an urgent problem.

Under current federal and Maine law, it is legal for an employer to refuse a pregnant worker's request for accommodations. Workers in physically demanding jobs are most impacted. Hospital, post office, airport, retail, warehouse, prison, public safety, hotel and other employers require pregnant workers to lift and move heavy objects. Even when an obstetrician imposes lifting restrictions, the employer can force a worker to choose between her job and her health. Pregnant workers in physically demanding jobs have suffered miscarriages, gone into premature labor or, in one case, had a stillborn baby after their employers rejected requests for lighter job assignments, according to a recent report in the New York Times.<sup>1</sup>

The absence of legal protections impacts Maine workers in every field. Pregnant workers may need time off for doctor's appointments. They may be advised by health care providers to take more frequent bathroom, water or meal breaks. Some pregnant workers may need a more comfortable chair or shorter work days at some point in their pregnancies.

It is disheartening as an attorney to advise clients – whether they are employers or workers – that federal and Maine law do not give a pregnant worker the right to less strenuous work, more breaks, or a shorter shift in the third trimester of pregnancy. But that is the advice I gave many times because it is the law.

Let's focus on the current law, and then turn to LD 666.

Currently, the Maine Human Rights Act requires an employer to accommodate disabled workers. 5 MRS §4572(2)<sup>2</sup>. A normal pregnancy, though, is not a disability. 5 MRS §4553-A<sup>3</sup>. And the Act forbids an employer from treating a pregnant worker "in a different manner from other persons who are able to work." 5 MRS §4572-A(2)<sup>4</sup>. But that is the heart of the problem -- many employers do not accommodate non-disabled workers. For example, an employer could refuse to give less strenuous work to an employee

<sup>1</sup> <https://www.nytimes.com/interactive/2018/10/21/business/pregnancy-discrimination-miscarriages.html>

<sup>2</sup> <http://legislature.maine.gov/statutes/5/title5sec4572.html>

<sup>3</sup> <http://legislature.maine.gov/statutes/5/title5sec4553-A.html>

<sup>4</sup> <http://legislature.maine.gov/statutes/5/title5sec4572-A.html>

who breaks his leg in a softball game. And if that is the practice or policy, that same employer can lawfully refuse an obstetrician's lifting restriction.

LD 666 fixes this problem by requiring an employer to provide a reasonable accommodation for an employee's "pregnancy-related condition." I have worked with the Maine Human Rights Commission and incorporated their suggestions into an amended version of LD 666, which is attached to my testimony.

The amended version makes four changes to existing Maine law.

- Paragraph 8-E is added to the definitions section of the Maine Human Rights Act and defines "pregnancy-related condition" as "a limitation of an employee's ability to perform the functions of a job caused by pregnancy, childbirth, lactation, or related medical conditions."
- Paragraph 2 is amended to expand the "able to work" concept already in the statute to include a pregnant worker who needs an accommodation to perform the essential functions of a job, as well as a pregnant worker who needs no such accommodation.
- Paragraph 2-A(B) requires an employer, employment agency or labor organization to provide a reasonable accommodation for an employee's pregnancy-related condition. Importantly, the pregnant person must be able to do the essential functions of the job and the employer is not required to provide an accommodation that imposes an undue hardship on the business of the covered entity.
- Paragraph 2-A(C) includes some examples of the accommodations a worker may request and an employer may provide.

Paragraph 2-A(A) confirms the status quo, stating that pregnancy, which is a healthy condition, is not a disability. A sentence is added to section 4 of the statute to ensure consistency.

LD 666 protects pregnant workers and establishes an effective process for an employer to provide a reasonable accommodation for an employee's "pregnancy-related condition." This bill appropriately establishes a more limited workplace accommodation than Maine's disability discrimination law, for a narrower scope of conditions that are temporary. It incorporates the "reasonable accommodation" process that an employer follows when an employee has a disability simply because employers are already familiar with that process.

Twenty-five states have enacted laws that provide protections for pregnant workers in need of a modest accommodation to stay healthy and employed, and a number of other states grant more limited rights.<sup>5</sup> LD 666 provides important protections for the health of pregnant workers, using a familiar process that safeguards businesses from undue burdens. This amendment to our existing pregnancy law will help keep pregnant workers employed, addressing Maine's worker shortage and giving Maine families economic stability.

Thank you for the opportunity to present this bill. I am happy to answer any questions you have.

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<sup>5</sup> [https://www.dol.gov/wb/state\\_protection\\_summary\\_508\\_txt.htm](https://www.dol.gov/wb/state_protection_summary_508_txt.htm)

Sponsor's proposed amendment dated May 6, 2019.

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2 **Be it enacted by the People of the State of Maine as follows:**

3 **Sec. 1. 5 MRSA §4553, sub-§8-E** is enacted to read:

4 **8-E. Pregnancy-related condition.** "Pregnancy-related condition" means a  
5 limitation of an employee's ability to perform the functions of a job due to pregnancy,  
6 childbirth, lactation, or a related medical conditions.

7 **Sec. 2. 5 MRSA §4572-A**, as amended by PL 1995, c. 393, §14, is further  
8 amended to read:

9 **§4572-A. Unlawful employment discrimination on the basis of sex**

10 **1. Sex defined.** For the purpose of this Act, the word "sex" includes pregnancy and  
11 medical conditions ~~which~~ that result from pregnancy.

12 **2. Pregnant persons who are able to work.** It ~~shall be~~ is unlawful employment  
13 discrimination in violation of this Act, except where based on a bona fide occupational  
14 qualification, for an employer, employment agency or labor organization to treat a  
15 pregnant ~~woman~~ person who is able to work in a different manner from other persons  
16 who are able to work. For purposes of this subsection, a pregnant person is considered able to  
work if the person can perform the essential functions of the person's position with or without  
reasonable accommodations.

17 **2-A. Accommodations for pregnancy-related conditions.** Accommodations for  
18 pregnancy-related conditions are set forth in this subsection.

19 A. Nothing in this section may be construed to indicate or deem that a pregnancy-  
20 related condition necessarily constitutes a disability.

21 B. It is unlawful employment discrimination in violation of this Act for an employer,  
employment agency or labor organization to fail to provide a pregnant person who is  
able to work with a reasonable accommodation for a pregnancy-related condition,  
unless the covered entity can demonstrate that the accommodation would impose an  
undue hardship on the operation of the business of the covered entity.

C. Reasonable accommodation for a pregnancy-related condition may include, but is not  
limited to, temporary modifications in break times and duration, work schedules, seating  
or equipment, and temporary transfer to less strenuous or hazardous work.

22 **3. Pregnant persons who are not able to work.** It ~~shall also be~~ is unlawful  
23 employment discrimination in violation of this Act, except where based on a bona fide  
24 occupational qualification, for an employer, employment agency or labor organization to  
25 treat a pregnant ~~woman~~ person who is not able to work because of a disability or illness  
26 resulting from pregnancy, or from medical conditions ~~which~~ that result from pregnancy,  
27 in a different manner from other employees who are not able to work because of other  
28 disabilities or illnesses.

**4. Employer not responsible for additional benefits.** Nothing in this section may be construed to mean that an employer, employment agency or labor organization is required to provide sick leave, a leave of absence, medical benefits or other benefits to a ~~woman~~ person because of pregnancy or other medical conditions that result from pregnancy, if the employer, employment agency or labor organization does not also provide sick leaves, leaves of absence, medical benefits or other benefits for the employer's other employees and is not otherwise required to provide those leaves or benefits under other state or federal laws. Reasonable accommodations for pregnancy-related conditions are not additional benefits.

## SUMMARY

This bill provides that it is unlawful employment discrimination for an employer to fail to provide a reasonable accommodation for an employee's pregnancy-related condition, unless provision of an accommodation would impose an undue hardship on the employer.